

REMARKS

This is in response to the Office Action mailed on June 7, 2004, and the references cited therewith.

Claims 1, 6-7, 13, and 15-20 are amended, claims 3-5 are canceled, and claims 21-23 are added; as a result, claims 1-2, and 6-23 are now pending in this application.

Double Patenting Rejection

Claims 1, 2, 6, 7, and 15-20 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of co-pending Application No. 10/691,158.

Claims 1-2, 6-7, and 15-20 were rejected under a non-statutory double patenting rejection, specifically U. S. Patent Serial No. 10/691,158. Applicants do not admit that the claims are obvious or duplicative in view of Patent No. 10/691,158. However, a Terminal Disclaimer in compliance with 37 CFR 1.321(b) (iv) is enclosed herewith to obviate these rejections. Therefore, Applicants believe that these provisional claim rejections have been overcome with the attached executed Terminal Disclaimer.

Claim Objections

Claims 6, 7, 17, and 20 were objected to on the basis that these claims are not in proper dependent format for a system claim. Applicants have amended these claims to be in proper dependent form and therefore believe that these objections are no longer appropriate and should be withdrawn.

Duplicate Claim Rejection

Claim 13 was objected to on the basis that the Examiner believes that original claim 13 is not substantially different from allowed claim 12. Although, Applicants disagree with this assessment, amendments have been made to claim 13 to positively recite the additional limitations which are not present in claim 12 and claim 13 is rewritten in proper dependent format. Therefore, Applicants believe that this objection is no longer appropriate and that claim

13 is now in condition for allowance, since claim 13 is dependent from claim 8, which presently stands allowed.

§103 Rejection of the Claims

Claims 1, 2, 6, 7, 15-18, and 20 were rejected under 35 USC § 103(a) as being unpatentable over Bohland et al. in view of either of Hillis or Todd et al. It is of course fundamental that in order to sustain an obviousness rejection that each and every element in the rejected claims must be taught or suggested in a single cited reference or in any proposed combination of references.

Bohland is directed toward teachings that recapture expensive metals from composite materials. The glass used in Bohland's teaching is not hazardous glass, because the glass in Bohland is glass mirrors. Mirrors typically contain silver and aluminum which is not considered hazardous.

Moreover, Bohland does not appreciate and is not concerned with the size of the crushed materials. This is why Bohland glosses over the necessary or desired size of the crushed materials. In fact, the size is not defined in Bohland; rather, the size is simply stated as sufficiently small enough. This type of teaching would not enable one of ordinary skill in the art to appreciate or even recognize that sizes between 10 nanometers and 2 millimeters exhibit unique physics that encapsulate any remaining heavy metals in the composition of glass waste, such that the particles of such size are not capable of being fractured by any naturally occurring force.

It makes sense that Bohland would not teach these critical points because Bohland is focused on recapturing and reusing expensive metals from composite materials. Bohland is not focused on and does not teach safely disposing or subsequently consuming the crushed materials. This is why Bohland does not explore the sizes of the crushed particles and does not identify their significances. Accordingly, Applicants assert that the amended independent claims are not obvious in view of Bohland and/or the other references and Applicants further assert that the claims are now in condition for allowance.

Allowable Subject Matter

Applicants acknowledge and appreciate that indication that claims 8-12 and 14 are allowed.

Claims 3-5 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have cancelled original claims 3-5 and rewritten claim 3 as new independent claim 21 and rewritten claims 4 and 5 as new dependent claims dependent from newly added independent claim 21. Therefore, Applicants believe that claims 21-23 are now also in condition for allowance.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

LARRY LEE LOUGH

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

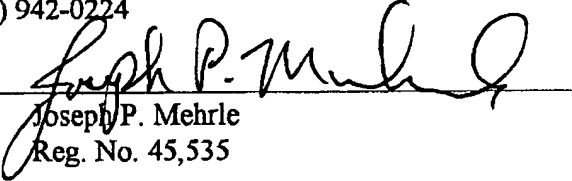
Minneapolis, MN 55402

(513) 942-0224

Date

9-7-04

By


Joseph P. Mehrle
Reg. No. 45,535

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 7th day of September, 2004.

Name

Peter Rebuffoni

Signature

Peter Rebuffoni